

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of Part 95 of the
Commission's Rules to
Establish a Very Short Distance
Two-way Voice Radio Service

)
)
)
)
)
)
)

RM-10564

RECEIVED

OCT 31 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Reply Comments of the Industrial Telecommunications Association, Inc.

The Industrial Telecommunications Association, Inc. (ITA), hereby respectfully submits its reply comments in response to the Commission's *Public Notice* (Notice) in the above-referenced matter.¹ The Notice seeks comment on ITA's *Petition for Rulemaking* (Petition), which seeks to amend Section 95.401(b) of the Commission's rules by specifically prohibiting daily business communications on Family Radio Services (FRS) frequencies.²

I. Statement of Interest

ITA is a Commission-certified frequency advisory committee coordinating in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate business and industrial/land transportation radio stations on frequency assignments allocated between 30-900 MHz

¹ See, Consumer & Government Affairs Bureau Reference Information Center, Petition for Rulemaking Filed, *Public Notice*, Report No. 2576 (rel. Sept. 17, 2002) (Public Notice).

See, Amendment of Part 95 of the Commission's Rules to Establish a Very Short Distance Two-Way Voice Radio Service, *Petition for Rulemaking*, RM-10564, filed on August 22, 2002 (Petition). See also, 47 C.F.R. § 95.627(a), stating that the FRS unit channel frequencies are 462.5625, 462.5875, 462.6125, 462.6375, 462.6625, 462.6875, 462.7125, 467.5625, 467.5875, 467.6125, 467.6375, 467.6625, 467.6875 and 467.7125 MHz.

ITA enjoys the support of a membership including more than 3,500 licensed two-way land mobile radio communications users, private mobile radio service (PMRS) oriented radio dealer organizations, and the following trade associations:

Alliance of Motion Picture and Television Producers
Aeronautical Radio, Inc.
Associated Builders & Contractors, Inc.
Florida Citrus Processors Association
Florida Fruit & Vegetable Association
National Mining Congress
National Propane Gas Association
National Ready-Mixed Concrete Association
National Utility Contractors Association
New England Fuel Institute
United States Telephone Association

In addition ITA is affiliated with the following independent market councils: the Council of Independent Communications Suppliers (CICS), the Taxicab & Livery Communications Council (TLCC), the Telephone Maintenance Frequency Advisory Committee (TELFAC), and USMSS, Inc

II. Background

On March 15, 1996, the Commission released a **Report and Order** (R&O), establishing FRS to meet the demand for short distance, personal, two-way communications.³ On August 22, 2002, ITA filed a **Petition for Rulemaking** to address the continually growing number of businesses using FRS channels. Specifically, ITA, in the Petition, asked the Commission to amend its rules to restrict daily business communications as traditionally defined in the Private

³ See Part 95 of the Commission's Rules to Establish a Very **Short** Distance Two-way Voice Radio Service, Report and Order, WT Docket No. 95-102 (rel. May 15, 1996)(R&O)

Land Mobile Radio Services, on FRS frequencies.’ On September 17, 2002, the Commission released a *Public Notice* soliciting statements on the Petition filed by ITA.⁵

III. Discussion

ITA and a majority of other commenters in this proceeding acknowledge that it is in the public interest for the Commission to amend its rules to prohibit daily business communications on FRS frequencies.⁶ FRS was established to “fill a market niche in short distance, personal communication needs.”’ If the use of business communications on FRS channels continues to increase, however, without an explicit prohibition, intended users will need access to alternative spectrum that is not overrun with daily business communications. As noted by Kenwood, families and friends on group outings have limited alternatives for personal communication, while business users have other options to meet their communications needs.⁸ AMTA notes, “to the extent commercial entities have alternative spectrum on which their requirements can be satisfied, it would be unfortunate if their use of FRS results in its diminished availability for family and group activities.”’

The record has shown that the use of business communications on FRS channels is not uncommon. A few commenters have even noted that the use of FRS by businesses is a cheaper

⁴ See Petition at p. 5.

⁵ See, Public Notice.

⁶ See, generally, Comments of David E. Hoffnagle; Comments of Atlantic Wireless Group; Comments of Communications Source Sales, Inc.; *Comments of Small Business In Telecommunications* (SBT); Comments of TuWay Wireless; Comments of Kenwood Communications Corporation (Kenwood); Joint Comments of Forest Industries Telecommunications (FIT) and MRFAC; Comments of the American Mobile Telecommunications Association, Inc. (AMTA).

⁷ R&O at ¶ 2.

⁸ See, Kenwood at p.4, “there are so many low-cost alternatives to FRS for business use, and so few alternatives for personal radio use ”

⁹ See. AMTA at p. 3.

alternative to traditional private land mobile bands.” Thomas P. Currie (Currie) states, “FRS is simply a lower cost alternative to the Part 90 itinerant frequencies.”” Personal Radio Steering Group, Inc. (PRSG) notes, “some business entities use FRS, not because of lack of clarity in the rules, but because FRS is cheaper than conventional land mobile radio.”¹² The need for cheaper business services, however, should not come at the expense of the public interest; namely, the safety of friends and families on group outings and the public at-large. The record demonstrates that FRS is being used by businesses on a daily basis for communication needs and such use will only continue to increase, making the time ripe for a Rulemaking proceeding prohibiting business use on FRS channels

In the Comments tiled on ITA’s Petition, no significant demonstration by any of the commenters warrants a denial of the Petition to prohibit daily business communications on FRS channels. Two of the commenting parties opposing the Petition, do so on the premise that FRS is a good alternative to licensed business channels¹³ Currie notes, “businesses using FRS on a routine basis are for single-site communications within a single store or plant and perhaps its adjacent parking lot.”¹⁴ A store and its parking lot would be an ideal place for families to use FRS. If a family wanted to use FRS in a mall, as envisioned by the Commission,¹⁵ while numerous stores in the mall were using these channels, however, congestion could hinder personal communication for the family.

¹⁰ See. Comments of Thomas P. Currie at p.1 (Cume), Comments of F.E. Brody at p. 1 (Brody), SBT at ¶ 3, Comments of Personal Radio Steering Group, Inc. at ¶ 8 (PRSG).

¹¹ See. Cume at p.1

¹² See. PRSG at ¶ 8.

¹³ See. Currie at p.1 and Brody at p.1.

¹⁴ See. Currie at p. 1

¹⁵ R&O at ¶ 5, stating that FRS would meet the criteria of “families and other small groups that have need for their members to communicate while visiting shopping malls and amusement parks, attending sporting events, camping or when taking part in recreational and other activities.”

Using FRS channels for communications in unintended situations could cause dangerous safety-of-life issues for employees and the public. For example, FIT and MRFAC note a potential hazardous situation resulting from the use of FRS in a plant setting.

"Radios designed and used on the industrial/business bands typically require a very deliberate action by the user to change the channels. In contrast, FRS radios are, by design, easily reprogrammed. In a business/industrial environment, where radios are used more often in safety-of-life situations, the accidental changing of the channel on an FRS mobile unit would result in the user calling for help on the wrong frequency."¹⁶

A prohibition on business communications on FRS channels is in the interest of both the safety of employees and the public at-large near these types of facilities

ITA would also like to take this opportunity to address statements made by commenters that question our intentions in filing this Petition. Two of the commenters claim our reasoning behind the Petition is to acquire more revenues through coordination of licensed channels.¹⁷ These assumptions are incorrect. ITA has fully supported the low power pool proposal that was submitted by the Land Mobile Communications Council (LMCC), later incorporated in a *Notice of Proposed Rulemaking* (NPRM).¹⁸ Included in the NPRM and the original LMCC plan is a group of twenty-five **12.5 kHz** offset channel pairs allocated for non-coordinated, itinerant use."¹⁹ ITA believes these channels would meet the needs of the businesses currently using FRS

¹⁶ See. FIT and MRFAC at p. 2-3.

¹⁷ See. Cume at p. I; PRSG at ¶ 5.

¹⁸ See, Amendment of Part 90 of the Commission's Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450-470 MHz Band. *Notice of Proposed Rulemaking*, RM-9966. (rel. July 24, 2001) (NPRM). See also, Amendment of Part 90 Of the Commission's Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450-470 MHz Band, RM-9966, *Comments of the Industrial Telecommunications Association, Inc.* (submitted October 12, 2001).

¹⁹ NPRM at ¶ 21.

channels, without impairment to other users. Operations on these channels would not require coordination or licensing, and as such, ITA would not benefit monetarily

If the Commission wanted an additional allocation for business users, it would have made these types of users eligible in the ***Report and Order***. Instead, they noted specific users who are simply not associated with business activities.²⁰ The name given to the radio service, the Family Radio Service, offers the best indication of whom the Commission intended as users of this spectrum

IV. Conclusion

ITA, as **we**, as a majority of other interested parties on record, believe a rulemaking proceeding to restrict daily business communications should be initiated to retain the authenticity and integrity of a Family Radio Service. The record demonstrates the growing use of FRS channels for business communications. Furthermore, business users are looking to FRS channels as a viable alternative to traditional business/industrial allocations. The continued growth of business users on FRS channels will eventually force the intended users (families and friends on group outings) off these frequencies with no other viable alternatives. **ITA** believes that the safety of the public at-large is in need of an amendment to Section 95.401(b) to specifically prohibit business communications on FRS frequencies.²¹

²⁰ R&O at ¶ 3. The **FRS** also would be useful to hunters, campers, **hikers**, bicyclists and other outdoor activity enthusiasts who need to communicate with other members of their party who are out of speaking range or sight but ~~still~~ in the same general areas."

47 C.F.R. § 95.401(b)

For the reasons presented herein, ITA urges the Commission to grant the Petition to amend the Commission's rules restricting daily business communications on FRS channels. We otherwise, request that the Commission initiate a rulemaking proceeding restricting such use.

Respectfully submitted,

INDUSTRIAL TELECOMMUNICATIONS
ASSOCIATION, INC.
1110 N. Glebe Road, Suite 500
Arlington, Virginia 22201
(703) 528-5115

By: /s/ Laura L. Smith

Laura L. Smith, **Esq.**
President and CEO

/s/ Jeremy Denton

Jeremy Denton
Director, Government Affairs

/s/ Robin Landis

Robin Landis
Regulatory Affairs Assistant

October 31, 2002

CERTIFICATE OF SERVICE

I, Robin Landis, do hereby certify that on the 31st day of October 2002, I forwarded to the parties listed below a copy of the foregoing Reply Comments of the Industrial Telecommunications Association, Inc. via mail:

Bryan Tramont, Esq.
Senior Legal Advisor
Office of Chairman Michael K. Powell
445 12th Street, SW, 8-B201
Washington, DC 20554

Sam Feder, Esq.
Legal Advisor
Office of Commissioner Kevin J. Martin
445 12th Street, SW, 8-C302
Washington, DC 20554

John Branscome, Esq.
Senior Legal Advisor
Office of Commissioner Kathleen Q. Abernathy
445 12th Street, SW, 8-4204
Washington, DC 20554

Paul Margie, Esq.
Legal Advisor
Office of Commissioner Michael J. Copps
445 12th Street, SW, 8-A302
Washington, DC 20554

Thomas J. Sugrue, Esq.
Chief, Wireless Telecommunications Bureau
445 12th Street, SW, Room 3-C252
Washington, DC 20554

Kathleen Ham, Esq.
Deputy Chief
Wireless Telecommunications Bureau
445 12th Street, SW, Room 3-C255
Washington, DC 20554

D'wana R. Terry, Esq.
Chief, Public Safety & Private Wireless
Division
Wireless Telecommunications Bureau
445 12th Street, SW, Room 4-C321
Washington, DC 20554

Mr. Herbert W. Zeiler
Deputy Chief, Public Safety & Private
Wireless Division
Wireless Telecommunications Bureau
445 12th Street, SW, Room 4-C343
Washington, DC 20554

Ramona E. Melson, Esq.
Deputy Chief, Public Safety & Private Wireless
Division
Wireless Telecommunications Bureau
445 12th Street, SW, Room 4-C237
Washington, DC 20554

Marlene H. Dortch, Esq.
Secretary
445 12th Street, SW, Room TW-325
Washington, DC 20554

Qualex International
Portals II
445 12th St. SW, Room **CY-B402**
Washington, DC 20554

Kathleen R. Watt
Communications Source Sales, Inc
1616 E. 11th Street
Cheyenne, WY 82001

Milton Price
Commercial Wireless Division
Wireless Telecommunications Bureau
445 12th St. SW, Room 4-A331
Washington, DC 20554

Small Business In Telecommunications
C/o Garret R. Hargrave
Schwaninger & Associates, P C.
1331 H Street, NW, Suite 500
Washington, DC 20005

"Secretary, Federal Communications
Commission
236 Massachusetts venue, **NE**, Suite 110
Washington, DC 20002

William E. Landis
TuWay Wireless
2115 City Line Road
Bethlehem. PA 18017

F.E. Brody
RR 2 Box 568
Thomaston, CT 06787

Kenwood USA Corporation
C/o Christopher D. Imlay
Booth, Freret, Imlay & Tepper, P.C
14356 Cape May Road
Silver Spring, MD 20904-6011

Thomas P. Currie
7001 Ethan Allan Way
Valley Station, KY 40272-1305

Marvin McKinley
MRFAC, Inc.
899-A Harrison Drive SE
Leesburg, **VA** 20175

David E. Hoffnagle
635 S. Maurice St.
York, PA 17404

Kenton Sturdevant
Forest Industries Telecommunications
871 Country Club Road, Suite A
Eugene, OR 97401

Deborah A. Dougher
Atlantic Wireless Group
2115 City Line Road
Bethlehem. PA 18017

David A. Nall
The Boeing Company
P.O.Box 3707, MC 3U-AJ
Seattle, WA 98124-2207

Alan R. Shark
American Mobile Telecommunications
Association, Inc
200 N. Glebe Rd. Suite 1000
Arlington, VA 22203

Corwin D. Moore, Jr
Personal Radio Steering Group, Inc
PO Box 2851
Ann Arbor, MI 48106

*via hand delivery

/s/ Robin Landis
Robin Landis